



September 16, 1999

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR99-2574

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127556.

The Texas Alcoholic Beverage Commission (the "commission") received a request "to review legal filings, responses, depositions, interrogatories, exhibits, and whatever else may be public record in the case style TABC v. NATCO, INC., dba, Giorgio's of San Antonio, SOAH Docket No. 458-98-1803." You inform us that the requestor has already inspected most of the requested documents. You contend that the remaining documents, exhibits 5, 18, 19, 22, and 31, are excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

First, you contend that the driver's license number in exhibit 5 is excepted from disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

Exhibit 5 contains a photocopy of a driver's license. We conclude that this photocopy is excepted from disclosure under section 552.130. We have marked exhibit 5 accordingly.

Next, you contend that the social security number listed in exhibit 5 is excepted from disclosure under section 552.101 in conjunction with federal law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A social security number is excepted from under section

552.101 in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Thus, the social security number in exhibit 5 is excepted from disclosure under section 552.101 if the commission obtained it or maintains it pursuant to any provision of law enacted on or after October 1, 1990.

Exhibits 18 and 31 consist of medical records. Section 5.08 the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). We agree that exhibits 18 and 31 are subject to the MPA. The commission may release these exhibits only in accordance with the MPA.

Exhibit 19 is a mental health record. Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We agree that exhibit 19 is confidential under section 611.002(a). The commission may release exhibit 19 only as provided by sections 611.004 and 611.0045.

Finally, you contend that exhibit 22 is excepted from disclosure under section 552.101 in conjunction with section 5.48 of the Alcoholic Beverage Code. Section 5.48 provides as follows:

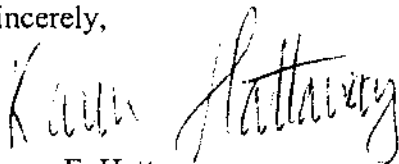
(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Public Information Act. Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the commission, with the exception of "the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof" and "any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee." Open Records Letter No. 95-258 (1995). With the exception of these types of information, the documents in exhibit 22 are confidential under section 5.48 and must be withheld from disclosure under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 127556

Encl. Submitted documents

cc: Mr. Robert J. Gradel
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(w/o enclosures)